

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 and
6 OSAGE MINERAL COUNCIL,
7 Intervenor-Plaintiff,
8 vs. Case No. 14-CV-704-GFK-JFJ
9 OSAGE WIND, LLC;
10 ENEL KANSAS, LLC; and
11 ENEL GREEN POWER NORTH
12 AMERICA, INC.,
13 Defendants.

13 DEPOSITION OF AARON WEIGEL
14 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
15 ON JUNE 29, 2021, BEGINNING AT 9:07 A.M.
16 ALL PRESENT ATTENDED REMOTELY VIA ZOOM
17 REPORTED BY KARLI DANIELS, CSR, RPR, CCR

16 APPEARANCES:

17 On behalf of the Plaintiff:

18 Nolan Fields
19 Catherine McClanahan
20 UNITED STATES ATTORNEY'S OFFICE
21 110 West 7th Street, Suite 300
22 Tulsa, Oklahoma 74119
23 (918)382-2700
24 nolan.fields@usdoj.gov
25 cathy.mcclanahan@usdoj.gov

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| <p>Page 2</p> <p>1 APPEARANCES CONTINUED:</p> <p>2 On behalf of the Intervenor-Plaintiff:</p> <p>3 Mary Katherine Nagle Shoney Blake PIPESTEM & NAGLE, P.C. 401 South Boston Avenue, Suite 2200 5 Tulsa, Oklahoma 74103 mknagle@pipestemlaw.com</p> <p>6</p> <p>7 On behalf of the Defendants:</p> <p>8 Ryan Ray NORMAN, WOHLGEMUTH, CHANDLER, JETER, BARNETT & 9 RAY, P.C. 401 South Boston Avenue, Suite 2900 10 Tulsa, Oklahoma 74103 (918)583-7571 rar@nwcjlaw.com</p> <p>11</p> <p>12 Lynn Slade Sarah Stevenson 13 MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. 500 Fourth Street NW, Suite 1000 14 Albuquerque, New Mexico 87103 (505) 848-1800 lynn.slade@modrall.com</p> <p>15</p> <p>16 Bob Comer NORTON, ROSE, FULBRIGHT, LLP 17 1225 17th Street, Suite 3050 Denver, Colorado 80202 18 (303)801-2728 bob.comer@nortonrosefulbright.com</p> <p>19</p> <p>20 Also present: Michelle Hammock, Christina Watson</p> <p>21 Videographers: Gabe Pack, CJ Shelton</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>Page 4</p> <p>1 THE VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Aaron Weigel, in the matter of United States</p> <p>3 and Osage Minerals Council versus Osage Wind, on June 29,</p> <p>4 2021. We are on the record at 9:07 a.m.</p> <p>5 Will counsel please state your appearances for</p> <p>6 the record.</p> <p>7 MS. NAGLE: Good morning. Mary Katherine Nagle</p> <p>8 of Pipestem & Nagle Law representing the</p> <p>9 Intervenor-Plaintiff, the Osage Minerals Council. With me</p> <p>10 here today I have my colleague, Shoney Blake.</p> <p>11 MR. FIELDS: United States of America,</p> <p>12 Plaintiff. My name's Nolan Fields, and I have Cathy</p> <p>13 McClanahan, Charles Babst with the Department of Interior</p> <p>14 Solicitors Office, Michelle Hammock and Chris Watson with</p> <p>15 our office.</p> <p>16 MR. RAY: Ryan Ray for the Defendants.</p> <p>17 Co-counsel Lynn Slade is also on the remote line. We are</p> <p>18 here for all defendants.</p> <p>19 THE VIDEOGRAPHER: The court reporter will now</p> <p>20 swear in the witness.</p> <p>21 WHEREUPON,</p> <p>22 AARON WEIGEL,</p> <p>23 after having been first duly sworn, deposes and says in</p> <p>24 reply to the questions propounded as follows, to-wit:</p> <p>25 DIRECT EXAMINATION</p> |
| <p>Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by Ms. Nagle 4</p> <p>4 Cross-Examination by Mr. Fields 111</p> <p>5 EXHIBITS</p> <p>6 Number Description Page</p> <p>7 89 Osage Wind Priv 000299-000302 21</p> <p>8 90 Osage Wind Priv 000427-000429 56</p> <p>9 91 Osage Wind Priv 000357-000358 70</p> <p>10 92 Osage Wind Priv 000359-0003660 74</p> <p>11 93 Osage Wind Priv 000361 75</p> <p>12 94 Osage Wind Priv 000165-000167 79</p> <p>13 95 IEA 00226838 80</p> <p>14 96 IEA 00239657-00239658 98</p> <p>15 97 Osage Wind 019006-019009 103</p> <p>16 98 Osage Wind Priv 000128-000144 142</p> <p>17 99 Osage Wind Priv 000092-000093 152</p> <p>18 100 Osage Wind Priv 000090-000091 152</p> <p>19 101 Osage Wind Priv 000233-000238 180</p> <p>20 STIPULATIONS</p> <p>21 It is stipulated that the deposition of Aaron</p> <p>22 Weigel may be taken pursuant to agreement and in</p> <p>23 accordance with the Federal Rules of Civil Procedure on</p> <p>24 June 29, 2021, before Karli Daniels, CSR, RPR, CCR.</p> <p>25</p> | <p>Page 5</p> <p>1 BY MS. NAGLE:</p> <p>2 Q Great. Good morning. My name is Mary</p> <p>3 Katherine, and I'm a partner at Pipestem & Nagle Law, and</p> <p>4 we represent the Osage Minerals Council, and so I will be</p> <p>5 asking you some questions here at the front end. I will</p> <p>6 try to make it as efficient as possible because I know my</p> <p>7 colleague, Nolan, over at the United States Attorney's</p> <p>8 Office is going to have questions as well.</p> <p>9 Just so I -- just so I know, is it -- your last</p> <p>10 name, is it Weigel? Is that how you pronounce it?</p> <p>11 A That's correct.</p> <p>12 Q Okay. Thank you. So, Mr. Weigel, good morning.</p> <p>13 MS. NAGLE: I'm sorry, did you say something,</p> <p>14 Nolan?</p> <p>15 MR. FIELDS: Yeah. I'm sorry for the feedback.</p> <p>16 I think that there's another attorney on the call, but he</p> <p>17 didn't announce himself for the record. I think that</p> <p>18 might want to happen, especially because he hasn't</p> <p>19 formally entered on behalf of the case yet.</p> <p>20 MS. NAGLE: Yes. I see -- and I think he was</p> <p>21 here with us yesterday.</p> <p>22 Ryan, is that one of --</p> <p>23 MR. RAY: Yes. I believe that's probably Bob</p> <p>24 Comer that's joined, and he will be appearing in short</p> <p>25 order for the defendants. That process is underway.</p> |

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| <p>Page 66</p> <p>1 A I do not.</p> <p>2 Q Okay. So another interesting issue, if we look</p> <p>3 at Saddle Mountain Minerals, the Washington Supreme Court</p> <p>4 case, there's this block quote here over the second part,</p> <p>5 beginning with "however", as we discussed before, here in</p> <p>6 Exhibit 36, it mentions, "Even if a surface owner can</p> <p>7 burden a mineral owner's right, it does not mean the</p> <p>8 surface owner can export minerals without the compensation</p> <p>9 to the mineral owner." I will note for the record that in</p> <p>10 Exhibit 81, the 2014 version, that "however" language here</p> <p>11 has been deleted. It's just -- it's just gone. Do you</p> <p>12 know why that -- that part of the quote from Saddle</p> <p>13 Mountain Minerals was deleted?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A I do not. I will say, by 2014, we had</p> <p>16 determined there was no materials to be exported.</p> <p>17 Q (BY MS. NAGLE) So that may have been the reason,</p> <p>18 just because the minerals were not being exported off the</p> <p>19 wind farm?</p> <p>20 A It's purely speculative because I did not</p> <p>21 prepare it, so --</p> <p>22 Q Well, I hate for you to speculate. So do you</p> <p>23 have any idea who would know why that language was</p> <p>24 deleted?</p> <p>25 A The person who prepared the memo would be the</p> | <p>Page 68</p> <p>1 it's a different scope.</p> <p>2 Q Okay. Let's see here. And so, you know, at</p> <p>3 this point, we're looking at this memo being sent to -- of</p> <p>4 course, first of all, the memo, this is dated October 20,</p> <p>5 2014. At that point do you recall whether or not the</p> <p>6 United States had asked or had demanded that Enel and</p> <p>7 EGPNA stop construction at the Osage Wind Farm?</p> <p>8 A I do not recall if at this point that had</p> <p>9 happened. I know that did happen around this time.</p> <p>10 Q Okay. And when that did happen, whether it was</p> <p>11 before or after this memo was sent, did defendants in this</p> <p>12 case, Osage Wind, EGPNA, Enel Kansas, did defendants stop</p> <p>13 construction at the Osage Wind Farm?</p> <p>14 A My job was in Kansas City in an office, and so I</p> <p>15 can't tell you if the field crew did or did not actively</p> <p>16 stop, but I assume there's someone else who you can talk</p> <p>17 to who did.</p> <p>18 Q Do you know who at Enel or EGPNA would have been</p> <p>19 in charge and made the decision to not stop construction</p> <p>20 in October of 2014?</p> <p>21 A I don't know. It could have been possibly maybe</p> <p>22 Nick Lincon would be someone who may know that answer.</p> <p>23 Q Okay. Do you know whether or not the memo that</p> <p>24 we just reviewed, Exhibit 81, the October 2014 version of</p> <p>25 the memo, was that relied on in making the determination</p> |
| <p>Page 67</p> <p>1 person to ask.</p> <p>2 Q Fair enough. On page 5, going back up just a</p> <p>3 little bit here, I will note, you know, this language here</p> <p>4 says "the reservation of the mineral rights reserved under</p> <p>5 the SRHA", which I think we looked earlier was the</p> <p>6 Stock-Raising Homestead Act, I might be getting that</p> <p>7 wrong, but that act that we were talking about, SRHA, is</p> <p>8 similar to that of the Osage Allotment Act, "although the</p> <p>9 contemplated surface uses under the SRHA are perhaps</p> <p>10 narrower than the general grant of surface rights for</p> <p>11 patentees under the Osage Allotment Act." Do you have an</p> <p>12 understanding of what that sentence means?</p> <p>13 A I do not.</p> <p>14 Q I'm sorry. What was your answer?</p> <p>15 A You're asking me to describe SRHA and how it's</p> <p>16 different from the Osage Allotment Act?</p> <p>17 Q Or do you have an understanding of what the</p> <p>18 significance is of the fact that here the attorneys are</p> <p>19 saying that the contemplated surface uses under the SRHA</p> <p>20 are narrower than the Osage Allotment Act? Do you have</p> <p>21 any understanding of what the significance of that is?</p> <p>22 A Yeah. I take that to mean that you shouldn't --</p> <p>23 you should not assume it's directly applicable.</p> <p>24 Q But the SRHA is directly applicable?</p> <p>25 A Not assume that it's directly applicable because</p> | <p>Page 69</p> <p>1 to not stop construction?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A My recollection is that memo was relied on from</p> <p>4 the beginning as the de facto evidence that what we were</p> <p>5 doing was not mining. Anything to the contrary was a</p> <p>6 misunderstanding.</p> <p>7 Q (BY MS. NAGLE) And before you -- let me rephrase</p> <p>8 that.</p> <p>9 So -- okay. Okay. When did you personally</p> <p>10 reach the conclusion that the construction activities and</p> <p>11 excavation at the Osage Mineral -- of the Osage mineral</p> <p>12 estate did not constitute mining?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A I think the solicitation of expert input was the</p> <p>15 correct action, and so in late 2013, going to our direct</p> <p>16 law representatives and having them find an expert, which</p> <p>17 was Modrall Sperling, who had experience with, you know,</p> <p>18 tribal interaction such as this, after reviewing that</p> <p>19 information, I felt confident that the answer we had</p> <p>20 received and the answer we had discussed was the correct</p> <p>21 one.</p> <p>22 Q (BY MS. NAGLE) Was there ever a time when you</p> <p>23 were uncertain as to whether or not a permit would be</p> <p>24 required from Osage Nation?</p> <p>25 A I have never been uncertain that a permit was</p> |